



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-04317

Dear Ms. Sangsvang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412622 (PIR No. W005973).

The City of Fort Worth (the "city") received a request for a specified police report. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note the city did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex.

¹You state social security numbers and Texas motor vehicle record information have been redacted from the submitted records pursuant to section 552.147(b) of the Government Code and previous determinations issued under section 552.130 of the Government Code. *See* Gov't Code §§ 552.147, .130; Open Records Decision No. 673 (2001) (previous determinations).

App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us the city received the instant request for information on January 3, 2011; therefore, the city's ten-business-day deadline under section 552.301(b) was January 18. The city requested this decision by United States mail meter-marked January 19. Thus, the city did not comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city claims section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The city's claim under section 552.108 does not provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision No. 586 (1991). Nevertheless, we understand the Tarrant County District Attorney's Office (the "district attorney") to contend the submitted information should be withheld under sections 552.103 and 552.108 of the Government Code. We note the interests under these exceptions of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision Nos. 586, 469 (1987). Therefore, we will determine whether the submitted information may be withheld on behalf of the district attorney under sections 552.103 and 552.108. We also will address the city's claim under section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure under section 552.302.

We next note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information constitutes a completed investigation. Although the submitted affidavit from the district attorney's office appears to contend section 552.103 of the Government Code is applicable in this instance, section 552.103 also is discretionary and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(1). Therefore, the city may not withhold any of the submitted information under section 552.103 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The submitted affidavit from the district attorney's office states the submitted information relates to a case in which an individual was convicted and sentenced to twenty-five years in prison. The affiant contends the case is still pending, and section 552.108 is applicable in this instance, because the defendant has yet to complete his sentence or exhaust all his post-conviction remedies. As the affiant does not indicate any post-conviction proceeding is pending, she appears to argue the defendant may eventually file a post-conviction writ. We note the city may not withhold the submitted information under section 552.108(a)(1) on the basis of a mere possibility of a post-conviction writ being filed. We therefore conclude the city may not withhold any of the submitted information under section 552.108 of the Government Code.

Next, we address the city's claim under section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential. The city claims section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The city contends the submitted information is confidential under section 261.201. We note the information at issue is related to an investigation of a homicide in which the victim was an adult. Having considered the city's arguments, we find the city has not demonstrated this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. We therefore conclude the submitted information is not confidential under section 261.201 of the Family Code, and the city may not withhold the information on that basis under section 552.101 of the Government Code.

We note some of the submitted information falls within the scope of section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an

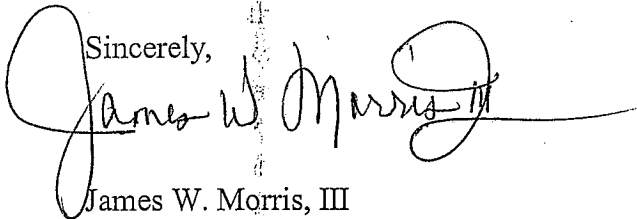
agency of this state.² See Gov't Code § 552.130(a)(1)-(2). The city must withhold the Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code.³

In summary, the city must withhold the Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code. The city must release the rest of the submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 412622

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas driver's license and license plate numbers under section 552.130 of the Government Code.